



Klickitat County
WATER CONSERVANCY BOARD
Application for Change/Transfer
Record of Decision

For Ecology Use Only

Received:

Date Stamp

Reviewed by: _____
Date Reviewed: _____

Applicant: Brooks & Denise Heard

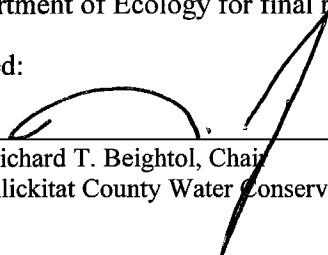
Application Number: CS4-CCVOL1-4P160

This record of decision was made by a majority of the board at an open public meeting of the Klickitat County Water Conservancy Board held on August 19, 2003.

☒ **Approval:** The Klickitat County Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on August 19, 2003 and submits this record of decision and report of examination to the Department of Ecology for final review.

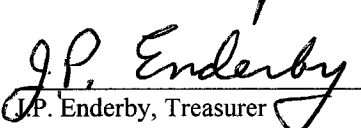
☐ **Denial:** The Klickitat County Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination on August 19, 2003 and submits this record of decision to the Department of Ecology for final review.

Signed:


Richard T. Beightol, Chair
Klickitat County Water Conservancy Board

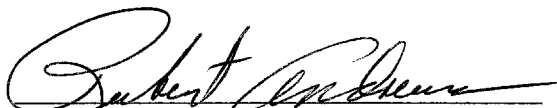
Date: 8-19-03

Approve ☒
Deny ☐
Abstain ☐
Recuse ☐
Other ☐


J.P. Enderby, Treasurer
Klickitat County Water Conservancy Board

Date: 8/19/03

Approve ☒
Deny ☐
Abstain ☐
Recuse ☐
Other ☐


Robert Andrews, Board Member
Klickitat County Water Conservancy Board


Date: 8/19/03

Approve ☒
Deny ☐
Abstain ☐
Recuse ☐
Other ☐

Alan Cheney, Board Member
Klickitat County Water Conservancy Board

Date: _____

Approve ☐
Deny ☐
Abstain ☐
Recuse ☐
Other ☒


Brooks J. Heard, Board Member
Klickitat County Water Conservancy Board


Date: 8/19/03

Approve ☐
Deny ☐
Abstain ☐
Recuse ☒
Other ☐

Mailed to the Department of Ecology Central Regional Office of Ecology and other interested parties on _____

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Klickitat County

Water Conservancy Board

Application for Change/Transfer

Report of Examination

TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON

X

Surface Water

Ground Water

DATE APPLICATION RECEIVED

July 16, 2002

PERMIT NUMBER

CERTIFICATE NUMBER

Vested Claim #4416

CHANGE APPLICATION NUMBER

CS4-CCVOL1-4P160

NAME

BROOKS AND DENISE HEARD

ADDRESS (STREET)

4 STOLLER ROAD

(CITY)

TROUT LAKE

(STATE)

WA

(ZIP CODE)

98650-9712

Changes Proposed:

X

Point of Diversion/Withdrawal

Place of Use

Purpose

Temporary

Other

DECISION HISTORICAL SUMMARY

Existing Use						Proposed Use					
QUANTITY, TYPE OF USE, PERIOD OF USE						QUANTITY, TYPE OF USE, PERIOD OF USE					
207 GPM FOR IRRIGATION, MARCH 1-DECEMBER 1						207 GPM FOR IRRIGATION, MARCH 1-DECEMBER 1					
Point of Diversion or Withdrawal						Point of Diversion or Withdrawal					
SOURCE		TRIBUTARY OF (IF SURFACE WATER)				SOURCE		TRIBUTARY OF (IF SURFACE			
WHITE SALMON RIVER		COLUMBIA RIVER				WHITE SALMON RIVER		COLUMBIA RIVER			
(1) A point N54 degrees W, 20.5 ch. Dist from the Corners of Section 13, 14, 23, 24 being within Section 14, T6N, R10EWM, Klickitat County, with an additional point of diversion granted in 1978 at:						(1) A point 1020 feet west and 500 feet south of the NE Corner of Section 31, T6N R11EWM, said point being coincident with the Trout Lake Water Company’s point of withdrawal.					
(2) 100 feet south and 225 west of the E ¼ Corner within the NE ¼ of the SE ¼ of Section 31, T6N, R11EWM											
NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,	NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,
(1)	SE	SE	14	6N	10EWM	(1)	NE	NE	31	6N	11EWM
(2)	NE	SE	31	6N	11EWM						
Place of Use						Place of Use					
LEGAL DESCRIPTION OF LANDS WHEREWATER IS PRESENTLY USED:)						LEGAL DESCRIPTION OF LANDS WHERE NEW USE IS PROPOSED					
All that portion of the NE ¼ of the SE ¼, Section 31 T6N R11EWM in the County of Klickitat and State of Washington, which lies northerly of that tract of land conveyed to Trout Lake Water Company by Deed recorded August 4 th , 1916 in Book 43, Page 409, Klickitat County Deed Records.						All that portion of the NE ¼ of the SE ¼, Section 31, T6N, R11EWM in the County of Klickitat and State of Washington, which lies northwesterly of the centerline of the White Salmon River and northerly of that tract of land conveyed to Trout Lake Water Company by Deed recorded August 4 th , 1916 in Box 43, Page 409, Klickitat County Deed Records.					
NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,	NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE, (
Tax Lot 0015	NE	SE	31	6N	11EWM	Tax Lot 0015	NE	SE	31	6N	11EWM

SEPA
The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is: X Exempt ☐ Not exempt

Water Right Priority Date 1899

BOARD’S TENTATIVE DETERMINATION

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE			
.46	207	49	Irrigation March 1 st through December 1 st each year			
SOURCE			TRIBUTARY OF (IF SURFACE WATER)			
White Salmon River			Columbia River			
AT A POINT LOCATED: A point 1020 feet west and 500 feet south of the NE Corner of Section 31, T6N, R11 EWM, said point being coincident with the Trout Lake Water Company’s point of withdrawal PARCEL NO. Tax lot 0002	¼ NE	¼ NE	SECTION 31	TOWNSHIP N. 6N	RANGE 11EWM	WRIA 29
COUNTY. Klickitat						
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED						
All that portion of the NE ¼ of the SE ¼, Section 31, T6N, R11EWM in the County of Klickitat and State of Washington, which lies northwesterly of the centerline of the White Salmon River and northerly of that tract of land conveyed to Trout Lake Water Company by Deed recorded August 4 th , 1916 in Book 43, Page 409, Klickitat County Deed Records.						
PARCEL NO. 0015	¼ NE	¼ SE	SECTION 31	TOWNSHIP N. 6N	RANGE, 11 EWM	

DESCRIPTION OF PROPOSED WORKS

Proposal will make permanent a new point of diversion. Physical construction of diversion box, pump and irrigation system was completed July of 1996.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: January 2003	COMPLETE PROJECT BY THIS DATE: December 2003	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE: Already in use
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REPORT

See WAC 173-153-130 - The following sections may be expanded onto additional pages.

BACKGROUND

This change application is based on Superceding Certificate of Change, Vol. 1-4, Page 160 and on the Claim to Vested Right No. 4416, which itself is partly based on “Articles of Agreement made the 4th day of June, 1899”.

The water right quantity for the subject property is based on Carlton Allaway’s Superceding Certificate of Change, Vol. 1-4, Page 160, dated 18th day of January, 1979. That change application was based on a proportionate share of 25 cfs for irrigation of 713 acres or 5.84 cfs for irrigation of 177 acres and was fully approved by Ecology and the water put to beneficial use by the Allaways. The Heard’s purchased their property with the water rights attached; the right’s quantities were allocated proportionally by irrigated acreage. This was amicably divided using simple arithmetic, the results discussed openly with the previous owners at the time of sale negotiation, and such open discussions continuing throughout the process. The previous owners and the applicants all understood and agreed that the water right remains appurtenant to the land, and that it divides automatically unless noted otherwise in a sale agreement, based on a plain reading of state water right statutes.

The Department of Ecology’s 1979 Record of Examination verified and accepted the instantaneous quantities claimed in the 1973 re-filing by the JC Hoke Ditch Company, Claim to Vested Right No. 4416. During this examination, Ecology noted that the annual acre foot quantity claimed by the JC Hoke Ditch Company is insufficient to effectively irrigate the acreage historically and presently associated with the claim. The JC Hoke Ditch Company has filed an amended claim with Ecology, noting that the quantity claimed as presently used in 1973 was understood by then Secretary, Carlton Allaway, representing the JC Hoke Ditch Company, to be the amount diverted from the river seasonally on a per acre basis, rather than the sum of all water used by all the acreage served by the ditch. The JC Hoke Ditch Company has requested a ministerial change to the claim records, noting the intent of Secretary Allaway to file on a per acre basis, rather than by total acreage. The 1973 re-filing form did not clearly request claimants to distinguish between quantities diverted and quantities used. Additionally, the specific meaning of the word “use” has changed in the intervening years.

Official recording and acceptance of the ditch company’s ministerial claim amendment by Ecology need not be completed as a condition of approval for this application because:

- 1. Ecology accepted and/or verified the quantities diverted in its own properly executed and completed Record of Examination and Certificate of Change in 1979.
- 2. Ecology and the board have been diligent in “tentatively determining” the validity of the claim as required by the R.D. Merrill decision.

All points of diversion associated with this application are surface withdrawals from the White Salmon River. The two currently approved points of withdrawal are located about 2 river miles apart, with the original point upstream and the 1978-1980 additional point approved downstream. The applicants seek a **new** point of withdrawal about 3/8 mile upstream from the approved lower point, and about 1 5/8 mile below the claim’s original point of withdrawal dating from 1899. Thus, the proposed point of diversion is cumulatively downstream.

The water right has clearly been put to beneficial use on the land over a very long period of time. A short period of partial non-use is excused because:

- 1. The water was not available from either of the approved points of diversion.
- 2. The applicants had a valid future determined development plan.

Further discussion of the partial relinquishment issue can be found in the applicant’s History and Technical Report.

The 3.5 acre foot per acre water duty for the subject parcel proposed by the applicant is acceptable given the light soils and windy conditions of the Trout Lake Valley. Additional technical information can be found in the applicant’s History and Technical Report.

COMMENTS AND PROTESTS

One comment was received by the Department of Ecology during the 45 day review period (for the withdrawn ROD of December 2002) from Pat Arnold, representing the J.C. Hoke Ditch Co. Board of Directors. Generally, her comments supported the Change Application but requested a single **new** point of diversion rather than an **additional** point of diversion. Her letter also confirmed the 3.5 acre foot crop duty.

INVESTIGATION

Water Right Adjudication Process:

Water right adjudication does not affect this applicant.

Public Notification of Applicants Request for Water Right Change:

Public notification for the applicant's request was published in the White Salmon *Enterprise* on July 25 and August 1, 2002 for the original December 2002 ROD (now withdrawn). Public notification for the applicant's request was published again in the White Salmon *Enterprise* on May 29 and June 5, 2003 and then yet again (to correct a comment deadline date error) on June 12, 2003. Copies of the application were mailed to all interested parties who requested copies of applications and Records of Decision. The original Affidavits of Publication are attached.

The time period for comments has concluded and neither the Washington State Department of Ecology nor the Klickitat County Conservancy Board has received additional comments regarding this application.

Compliance with State Environmental Policy Act:

This application is exempt under SEPA regulations.

Verification of Existing Right and Water Use:

Existing Water Right

Vested Claim No. 4416

Superseding Certificate of Change, Vol. 1-4, Page 160 dated January 18, 1979 signed by Russell K. Taylor, Regional Manager, DOE.

Report for Findings of Fact and Decision dated 7-17-80 by A. Herb King, approved by Doug Clausen, Division Supervisor, DOE on 7-18-80.

Final Certificate of Change, Vol. 1-4, Page 178, to Change the Point of Diversion of surface waters as stated in the claim to vested right, No. 4416 dated 9th day of October, 1980 and signed by Russell K. Taylor, Regional Manager, DOE.

Beneficial Use Determination

Site Visit. (See attached report from Klickitat County Conservancy Commissioner Alan Cheney dated December 2, 2002.)

Crop History. The primary crop during the pre-application period was alfalfa. A wide variety of crops have been grown by the applicants since 1996. For additional information see applicant's History and Technical Report.

Total Water Right Available for Change

- 1) Maximum instantaneous diversion of .46 cfs. (207 gpm)
- 2) Water duty of 3.5 acre feet on 14 acres (49 acre feet annually)

Supporting Technical Information & Analysis:

State of Washington Irrigation Guide Prepared by USDA, Soil Conservation Service, and WSU Extension Service
WRIA 29 Water Rights and Water Use Assessment Revised Draft November/2002 Prepared by Joanne Greenberg
P.E., Watersheds Professionals Network 1905 Broadway Avenue Bellingham, Washington 98225

Potential for Impairment:

The board finds no potential for impairment of other irrigators because:

- 1) The Trout Lake Water Company's ditch and withdrawal structures are physically large enough to handle the additional water.
- 2) There have been no protests.
- 3) Initial studies by watershed planning group (WRIA 29) indicate no over-appropriation in the White Salmon basin

The board finds no potential for impairment of instream values because:

- 1) The additional point of withdrawal is cumulatively downstream from the original point of withdrawal.
- 2) The additional point of withdrawal will allow the abandonment of the second point of withdrawal, reducing the number of take-outs on the river.
- 3) The construction of the proposed new point of withdrawal is already complete. No instream construction will be necessary.

Effect or Detriment to Public Interest:

The public interest was not considered. The state supreme court decision in Pend O’Reille PUD vs Ecology removed the public interest test in transferring surface water claims and rights.

CONCLUSIONS

For the subject water right, the findings based on the above investigation are as follows:

1. The quantity of water put to beneficial use and available for change under Final Certificate of Change, Vol. 1-4, Page 178, proportional to the subject acreage, is .46 cfs and 49 acre feet annually.
2. The proposed change will not increase the right or the quantity of consumptive and non-consumptive beneficial use of water.
3. Public notice has been provided for the proposed action; no objections or concerns have been raised to the Water Board or Department of Ecology.
4. The proposed change will not impair existing rights.

RECOMMENDATIONS

The Klickitat County Water Conservancy Board hereby accepts approval for the water right change within this Record of Decision on August 19, 2003, and submits this Record of Decision to the Director of the Washington State Department of Ecology for final review or consideration.

PROVISIONS AND CONDITIONS

1) An approved measuring device shall be installed and maintained at the place of use in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.

Water use data shall be recorded weekly. A minimum of five years of data shall be maintained by the property owner and promptly submitted to Ecology upon request. Recording and retention of data by the water right holder are required to inform the water users about how much water is used, when the water is used and to assist users in efficient water management.

Chapter 173-173 WAC describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document entitled "Water Measurement Device Installation and Operation Requirements".

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.

Signed at Goldendale, Washington
This 19th day of August, 2003

Richard T. Beightol, Chair
Klickitat County Water Conservancy Board

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For attachments not included or for more information please contact:

Daniel R. Haller, P.E.
Water Resources Program
Department of Ecology, Central Region Office
15 W Yakima Ave, Suite 200
Yakima, WA 98902-3452
(509) 454-4255 phone
(509) 575-2809 fax
dhal461@ecy.wa.gov